No. 06-273

FILED
SEP 21 2006
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SUPREME COURT, U.S.

In The
Supreme Court of the United States

MIKE COX, in his official capacity as Attorney General of the State of Michigan; ROBERT KLEINE, in his official capacity as Treasurer of the State of Michigan,

Petitioners,

v.

DAIMLERCHRYSLER CORPORATION; DAIMLERCHRYSLER-UAW PENSION AGREEMENT,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I. Should the Petition be denied where Petitioners have presented no compelling reasons to permit review since the Sixth Circuit's holding that Michigan's State Correctional Facility Reimbursement Act (SCFRA) is preempted by ERISA because it constitutes an alienation of benefits enforceable against the Daimler-Chrysler Pension Plan does not conflict with an opinion of this Court or of another Court of Appeals?

II. Should the Petition be denied where Petitioners have presented no compelling reasons for review because enforcement of SCFRA is generally preempted by ERISA since it requires DaimlerChrysler, a Pension Plan fiduciary, to violate Pension Plan terms which (i) prohibit the assignment and alienation of Pension Plan benefits, and (ii) permit only its Participants to provide the Pension Plan with Participants' address information and thus, exposes DaimlerChrysler to a breach of fiduciary duty claim by its Participants?

RULE 29.6 STATEMENT

Pursuant to this Court's Rule 29.6, Respondents state that DaimlerChrysler Corporation is a wholly owned subsidiary of DaimlerChrysler North America Holding Corp., which is, in turn, a wholly owned subsidiary of DaimlerChrysler A.G. DaimlerChrysler-UAW Pension Agreement is not a Corporation.

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ADDITIONAL STATUTORY PROVISIONS INVOLVED

Mich. Comp. Laws Ann. § 800.404(6), of the Michigan State Correctional Facility Reimbursement Act, provides:

> If the person, corporation, or other legal entity shall neglect or refuse to comply with an order under subsection (3), the court shall order the person, corporation, or other legal entity to appear before the court at such time as the court may direct and to show cause why the person, corporation, or other legal entity should not be considered in contempt of court.

COUNTER-STATEMENT OF THE CASE

The Employee Retirement Income Security Act, as amended (ERISA), 29 U.S.C. § 1001 et seq., is designed to protect the interests of participants and beneficiaries in employee benefit plans. One of the methods by which ERISA protects participants and beneficiaries is through its anti-alienation provision. This provision generally prohibits any party from obtaining rights to a participant's pension benefits that are enforceable against the pension plan. 29 U.S.C. § 1056(d)(1).

The Michigan State Correctional Facility Reimbursement Act (SCFRA), Mich. Comp. Laws Ann. § 800.401 et seq., in effect allows the warden of any Michigan correctional institution to garnish up to 90% of a prisoner's pension benefits. Mich. Comp. Laws Ann. §§ 800.401(a) and 800.403(3). The garnished funds are allegedly used to reimburse the State of Michigan for the cost incurred in

supporting the prisoner. When a prisoner does not voluntarily assign his pension benefits to his prison account, the statute requires that the facility warden send notice to the relevant pension plan directing the plan to send benefits to the institutional address. Failure to follow this directive can subject the plan to a contempt action. Mich. Comp. Laws Ann. § 800.404(6). Upon receipt, the funds are deposited directly into the prisoner's account, from which the warden may garnish 90% of each deposit pursuant to SCFRA.

Faced with conflicting statutory responsibilities under ERISA and SCFRA, Respondents DaimlerChrysler and the DaimlerChrysler Corporation-UAW Pension Agreement (the "Pension Plan" or "Plan") sought, and the district court granted, a declaratory ruling that the Plan did not have to comply with the SCFRA orders and notices compelling it to send pension benefits to an incarcerated Participant's institutional account unless directed to do so by the Participant. On appeal, the Sixth Circuit affirmed the district court's ruling and held that when under SCFRA, a warden directs a pension plan to send pension assets to a certain address, rather than the Participant, then this scheme constitutes an alienation of benefits in violation of ERISA.

Contrary to Petitioner's representations, this ruling presents no new issues for this Court. In fact, the holding is in line with decisions of this Court in *Guidry v. Sheet Metal Workers Nat'l Pension Fund*, 493 U.S. 365 (1990), *Boggs v. Boggs*, 520 U.S. 833 (1997), and *Egelhoff v. Egelhoff*, 532 U.S. 141 (2001). Petitioners argue that the Sixth Circuit has engrafted an additional element onto the Treasury definitions of "assignment" and "alienation" by concluding that an alienation occurs when the prisoner does not voluntarily designate receipt of his pension

benefit at a particular place. Petitioners argue, further, that this results in the prisoner's ability to disregard prison directives and maintain a private bank account outside the prison.

However, the Sixth Circuit has not expanded the definition of assignment at all. Its holding states that the diversion of pension benefits to the State of Michigan before the inmate actually receives them, under SCFRA, constitutes an alienation under ERISA, 29 U.S.C. § 1056(d)(1) and federal case law interpreting that provision. Moreover, there is nothing in the Sixth Circuit's decision or in the Plan that allows inmates to maintain private bank accounts in violation of prison directives.

A. Background

DaimlerChrysler established and maintains the Pension Plan for the benefit of eligible participants, former employees, and their beneficiaries. Alvin Jenkins, Harold Swanson, Gerald Cotter, and Jessy Mathews (collectively, "Participants") who are Participants in the Pension Plan are incarcerated at Michigan State correctional facilities. DaimlerChrysler is a Pension Plan fiduciary with a duty to comply with Pension Plan terms and to act in the best interest of the Participants.

Petitioner, State Treasurer, currently Robert Kleine, filed separate actions against Participants pursuant to SCFRA, Mich. Comp. Laws Ann. §§ 800.403, 800.404, seeking Participants' Pension Plan benefits to reimburse expenses incurred by the State while Participants are incarcerated. Respondents were not named in these actions. The State's courts issued four separate orders requiring Participants to notify DaimlerChrysler Corporation of their

current legal addresses for purposes of receiving pension benefits, and requiring that all pension benefits be mailed by check made payable to the Participant at his Michigan correctional facility address. *DaimlerChrysler Corp. v. Cox*, 447 F.3d 967, 969 (6th Cir. 2006); Pet. App. 4a. If a Participant fails or refuses to follow the court's order, the order requires the warden at such facility to serve a copy of the order on "Chrysler Corporation" along with a certification of the Participant's address. Each order provides that such "certification" from the warden to DaimlerChrysler is to "serve as notification to Chrysler Corporation of the [Participant's] legal address" where he is to receive Pension Plan benefits. *Id.* at 970; Pet. App. 5a. Finally, each order states that the warden is ordered to make monthly distributions to the State of Michigan from the Participant's prison account in an amount equal to 90% of any assets (including pension benefits) which are received and deposited into the account. *Id.*; Pet. App. 5a. The sole purpose of the orders, as correctly determined by the Sixth Circuit, is to direct the Participants' Pension Plan benefits directly to the warden (via the Participant's prison account) for the State's use. *Id.* at 975; Pet. App. 15a.

After State court orders were issued, Michigan's Attorney General, Mike Cox, acting in his official capacity, sent DaimlerChrysler three notices, along with each respective order. The notices indicated that Participants Jenkins, Swanson, and Mathews "refused to sign the certification of [their] legal address as required by the [attached] Court's Order" and therefore, the warden is notifying DaimlerChrysler of their prison address. *Id.* at 970; Pet. App. 5a-6a. The notices direct DaimlerChrysler to send all Pension Plan benefits to a Participant's prison address. *Id.*; Pet. App. 6a.

Throughout this litigation, Petitioners have raised the State's ability to enforce the notices against the Plan. Indeed, SCFRA's penalty provision states:

> If the person, corporation, or other legal entity shall neglect or refuse to comply with an order under subsection (3), the court shall order the person, corporation, or other legal entity to appear before the court at such time as the court may direct and to show cause why the person, corporation, or other legal entity should not be considered in contempt of court.

Mich. Comp. Laws Ann. § 800.404(6). And, Petitioner's lower court pleadings have also referenced and acknowledged DaimlerChrysler's obligation to comply by stating, "Plaintiffs should be held in contempt of Court," "Plaintiffs are obligated to follow the written notice of address change . . . ," and "[T]he Plan is expected to acknowledge the address change, whether that notice is received from the prisoner or the warden." *See*, R. 10, *Defendants' Answer to Complaint*, ¶ 7; R. 29, *Defendants' Response to Plaintiffs' Motion for Declaratory Judgment*, p. 3; *Defendants-Appellants' Brief on Appeal to the Sixth Circuit*, p. 21, § I.3.

Rather than comply with the Attorney General's notices, DaimlerChrysler continued to follow ERISA and Pension Plan terms which (i) prohibit the assignment and alienation of benefits and (ii) provide that only a Participant may direct DaimlerChrysler to change his address. *DaimlerChrysler*, 447 F.3d at 970; Pet. App. 6a. Relevant Pension Plan terms in Section 14 provide, "[a]ny attempt to alienate, sell, transfer, assign, pledge or otherwise encumber [benefits payable under the Pension Plan], whether presently or thereafter payable, shall be void." *Id.*

at 971; Pet. App. 7a. The Pension Plan states that benefits cannot "devolve upon anyone else." *Id.*; Pet. App. 7a.

B. Proceedings Below

Faced with conflicting obligations under ERISA and SCFRA, Respondents sought a declaratory judgment to clarify their responsibilities. The Sixth Circuit affirmed the district court's ruling granting Respondents' Motion for Declaratory Judgment on the basis that the SCFRA orders and notices are preempted by ERISA's anti-alienation provision; 29 U.S.C. § 1056(d)(1). The Sixth Circuit stated:

> We therefore affirm the district court's holding that the SCFRA orders and notices are void to the extent that they direct DaimlerChrysler to send benefits to an address not designated by a beneficiary. The state may still send the notices, but DaimlerChrysler is not obligated to comply with them.

DaimlerChrysler, 447 F.3d at 975; Pet. App. 15a. The Sixth Circuit found it unnecessary to rule on Respondents' argument that the SCFRA scheme was generally pre-empted by ERISA because it related to the terms of the Pension Plan. Moreover, the Sixth Circuit did not agree with Respondents' arguments of *stare decisis*, collateral estoppel, and *res judicata*, in light of *Roberts v. Baugh*, 986 F. Supp. 1074 (E.D. Mich. 1997), a case involving the *same parties* and deciding the *same issues* as are raised in this case.

REASONS FOR DENYING THE PETITION

The Sixth Circuit's opinion held that, as applied in this case, SCFRA is preempted by ERISA because it constitutes an alienation of benefits enforceable against the Pension Plan in violation of ERISA. This holding presents no new issues to this Court. Contrary to Petitioners' assertion, the Sixth Circuit's decision conforms with precedent of this Court and other Courts of Appeals. Moreover, the SCFRA scheme constitutes a state law that relates to an ERISA plan and is thus, generally preempted by ERISA.

A. The Sixth Circuit Correctly Held that the SCFRA Scheme Is Preempted by ERISA Because it Violates ERISA's Anti-alienation provision.

ERISA prohibits the assignment and alienation of a pension plan benefit. ERISA's anti-alienation provisions provide, in part:

> Each pension plan shall provide that benefits provided under the plan may not be assigned or alienated.

29 U.S.C. § 1056(d)(1). As more fully explained below, the SCFRA scheme reflected in the orders and notices violates the above provisions because: (i) it is an "assignment" pursuant to the applicable Treasury Regulation interpreting ERISA's anti-alienation provisions; and (ii) it is an assignment pursuant to *Guidry* and *Boggs*, decisions of this Court, interpreting ERISA's anti-alienation provisions.

Pursuant to its authority to promulgate regulations interpreting ERISA's anti-alienation provision, the Secretary of the Treasury issued Regulation § 1.401(a)-13. *General Motors Corp. v. Buha*, 623 F.2d 455, 462 (6th Cir. 1980) (explaining that the Department of Treasury has authority to promulgate regulations under ERISA and that Treas. Reg. § 1.401(a)-13 is the applicable definition of "assignment" when construing ERISA's anti-alienation provisions). The Treasury Department regulation defines "assignment" to include direct as well as *indirect* arrangements and states:

> (ii) Any direct or *indirect arrangement* (whether revocable or irrevocable) whereby a party acquires from a participant or beneficiary *a right or interest* enforceable against the plan in, or to, *all or any part of a plan benefit payment which is, or may become, payable to the participant or beneficiary.*

26 C.F.R. 1.401(a)-13(c)(1) (emphasis added). The SCFRA scheme effectuates an "assignment" according to the above definition.

First, the SCFRA scheme reflected in the notices and related orders is an "indirect arrangement whereby [the warden (a State representative)] acquires from a participant or a beneficiary a right or interest . . . in, or to, all or part of a plan benefit which is, or may become, payable to the participant or beneficiary." 26 C.F.R. § 1.401(a)-13(c)(1). Upon receipt of the notices, DaimlerChrysler is required to change the Participant's address to the Participant's prison address or be held in contempt of Court.[1]

[1] DaimlerChrysler, pursuant to Plan terms, does not change Participant's address information (even if it has knowledge that the

(Continued on following page)

Mich. Comp. Laws Ann. § 800.404(6). If, pursuant to the notices, DaimlerChrysler is required to change the Participant's address, then all subsequent Pension Plan payments to the prison address constitute a direct (or at a minimum, an indirect) "*transfer*" of benefits directly into the hands of the State of Michigan *before* distribution to the Participant. This is illustrated by the language in the order which states that the warden is required to make monthly distributions to the State of Michigan from the prison account in an amount equal to 90% of any assets which are received and deposited in the account. *DaimlerChrysler*, 447 F.3d at 970; Pet. App. 5a; *see also*, Mich. Comp. Laws. Ann. § 800.403(3). The inescapable conclusion is that if the orders and notices are enforced against the Pension Plan, the *State Treasurer receives 90% of the Pension Plan benefit and neither the Participant nor his dependents ever receive or have access to that portion of the benefits.*

Petitioners argue that because the funds are deposited into a prison account in the name of the prisoner and then disbursed to the State, there is no alienation. Petitioners do not dispute that the benefits ultimately end up in the hands of the State. Yet, they have never explained why this does not constitute an *indirect* arrangement pursuant to the Treasury Regulation. The Sixth Circuit rejected Petitioners' position and held that the SCFRA scheme "operate[s] on plan benefits *before* they are sent." *DaimlerChrysler*, 447 F.3d at 974; Pet. App. 13a. The appeals court explained that if the notices are enforced they divert

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Participant's address has changed) without direction from the Participant to do so.

benefits against the participants' wishes prior to distribution. *Id.*[2]

Petitioners contend that the Sixth Circuit's disregard of *State Treasurer v. Abbott*, 660 N.W.2d 714 (Mich. 2003), *cert. den.*, 540 U.S. 1112 (2004), was misguided. In *Abbott*, the Michigan Supreme Court held that money deposited in the prison account had not been transferred to another person and thus no alienation occurred. The Sixth Circuit found *Abbott* unpersuasive since the prisoners did not want to receive benefits at the prison address and upon receipt at the prison the state owned 90% of the payments before they were effectively received by the prisoner. *Abbott* declined to follow the Treasury Department's definition of "assignment" and clear precedent from this Court in *Guidry v. Sheet Metal Workers Nat'l Pension Fund*, 493 U.S. 365 (1990), discussed later in this section.

The SCFRA scheme also meets the second part of Tres. Reg. § 1.401(a)-13(c)(1), "assignment" definition because the State's interest in the Participants' pension benefits is "enforceable against the plan" through the notices, related orders and SCFRA's contempt provision. As the Sixth Circuit held:

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[2] Petitioners confuse the Court by representing that the issue is whether an illegal assignment of benefits under ERISA can occur after distribution. Respondents recognize that there is a circuit court split on that issue. Whether an alienation can occur after distribution of benefits was not the issue before the Sixth Circuit and is not the issue before this Court. The parties in this case dispute whether a procedure for distribution of benefits that is forced onto the Plan by a non-participant and subsequent garnishment of benefits, constitute a violation of ERISA's anti-alienation provision.

> If we were to hold that DaimlerChrysler must comply with the SCFRA nctices, we would be creating a legal obligation enforceable against the Pension Plan. The state's interest in 90% of the pension benefits would then be enforced through notices instructing the Pension Plan to send the prisoner's benefit payments to an account controlled by the warden, which would constitute an alienation of plan assets.

DaimlerChrysler, 447 F.3d at 975; Pet. App. 15a. Indeed, Petitioners also admit that the "State court orders affect[] where the Plan delivers benefits . . . " Pet. 7. In addition, SCFRA, provides, in part:

> (6) if the person, corporation, or other legal entity shall neglect or refuse to comply with an order . . . , the court shall order the person, corporation, or other legal entity to appear before the court at such time as the court may direct and to show cause why the person, corporation, or other legal entity should not be considered in contempt of court.

Mich. Comp. Laws Ann. § 800.404(6). In accordance with this provision of SCFRA, DaimlerChrysler could be held in contempt for failing to follow the SCFRA orders and notices. Thus, the Sixth Circuit found that SCFRA through the orders and notices is an alienation of benefits that is enforceable against the Plan.

This Court's holding in *Guidry* also supports this conclusion. In *Guidry*, this Court held that a constructive trust imposed by the district court on a participant's pension benefits violated ERISA's anti-alienation provisions because the trust ran contrary to the policy of Congress to protect a stream of income for the participant

and his beneficiaries. *Guidry*, 493 U.S. at 372. The dispute arose after the participant embezzled a large sum of money from a union. The union obtained a judgment against the participant and the district court imposed a constructive trust on the participant's pension plan benefits. The participant argued that the constructive trust violated ERISA's anti-alienation provisions.

This Court agreed with the participant and reasoned that ERISA's anti-alienation provisions reflect a "considered congressional policy choice, a decision to safeguard a stream of income for pensioners (and their dependents, who may be, and perhaps usually are, blameless)[.]" *Id.* at 376. It concluded that carving out *any* exception to ERISA's anti-alienation provisions should be left to Congress – even in instances of employee malfeasance or criminal misconduct – and held that the imposition of a constructive trust on the participant's pension plan benefits violated ERISA's anti-alienation provisions. *Id.* at 376.[3]

The Pension Plan, like the plan in *Guidry*, is an ERISA plan that includes the anti-alienation provision required by ERISA. In *Guidry*, the constructive trust was imposed before the benefits were received essentially

[3] Congress has *not* carved out an exception to ERISA's anti-alienation provisions for SCFRA. Congress has carved out some exceptions, but none of those exceptions apply to this case. *See, e.g.*, 29 U.S.C. § 1056(d)(4) and (5) (permitting an ERISA plan fiduciary, pursuant to a judgment or settlement, to offset benefits due to a participant's wrongdoing involving the ERISA plan); 29 U.S.C. § 1056(d)(3) (providing for an exception to ERISA's anti-alienation provisions for a "qualified domestic relation order"); *United States v. Tyson*, 242 F. Supp. 2d 469 (E.D. Mich. 2003), *order sustained in part, overruled in part*, 265 F. Supp. 2d 788 (E.D. Mich. 2003) (holding that Congress had created an exception to ERISA's anti-alienation provisions pursuant to Mandatory Victims Restitution Act, 18 U.S.C. § 3613).

forcing the plan to assign the benefits to a third party. In this case, the SCFRA scheme is also imposed on the Plan before the benefits are received by the Participant resulting in an assignment of benefits to the State. The SCFRA orders and notices attempt to carve out an exception to ERISA's anti-alienation clause, which *Guidry* expressly prohibits. *Id.* at 376. Because the notices require Respondents to send a Pension Plan benefit into the hands of a State representative (if the Participants do not notify Petitioners of their prison address), they run contrary to ERISA's anti-alienation provisions and are preempted by ERISA. To follow the analysis of this Court in *Guidry*, there is "no meaningful distinction between a writ of garnishment and [the SCFRA scheme] imposed in this case." *Id.* at 372.

The Sixth Circuit's decision is also in accord with this Court's decision in *Boggs v. Boggs*, 520 U.S. 833 (1997). In *Boggs*, this Court held that a testamentary transfer of certain undistributed pension benefits violated ERISA's anti-alienation provision. In so holding, this Court stated, "ERISA's pension plan anti-alienation provision is mandatory and contains only two explicit exceptions, *see* §§ 1056(d)(2), (d)(3)(A), which are not subject to judicial expansion." *Id.* at 851. The Sixth Circuit correctly prohibited Petitioners from attempting a judicial expansion of exceptions to the ERISA anti-alienation provision through enforcement of the SCFRA scheme against the Pension Plan.

The Eastern District of Michigan followed the *Guidry* decision in *Roberts v. Baugh*, 986 F. Supp. 1074 (E.D. Mich. 1997), which (like the Sixth Circuit) held that the

SCFRA scheme is an assignment and alienation and is preempted by ERISA.[4] The reasoning in *Baugh* served as the basis for the district court's ruling in the case at hand. *Baugh* held that the same SCFRA scheme in this case violated ERISA's anti-alienation provisions and was preempted by ERISA. *Baugh*, 986 F. Supp. at 1077. The *Baugh* Court stated:

> The Court agrees that once pension benefits are placed in a personal account, ERISA no longer operates to protect those funds. * * * However, *in the instant case, defendant Chrysler Corp. would not be voluntarily depositing the pension funds into [the participant's] personal prisoner account but would be doing so only by court order. Such an involuntary transfer clearly constitutes an assignment.*
>
> Moreover, the United States Supreme Court held that the involuntary transfer of ERISA benefits is prohibited under the anti-alienation clause. * * * Because ERISA does not permit an involuntary assignment, plaintiffs' request for reimbursement under SCFRA violates ERISA and is therefore preempted.

Baugh, 986 F. Supp. at 1077 (emphasis added) (citations omitted). Just as in *Baugh*, Petitioners attempt, by way of the SCFRA scheme, to require DaimlerChrysler to send a

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[4] *See also, Walters v. Cox*, 342 F. Supp. 2d 670 (E.D. Mich. 2004). In *Walters*, Mike Cox, in his official capacity as Attorney General for the State of Michigan, was a named defendant. The court pointed out that a Michigan Circuit Court Order under SCFRA (like the orders at issue here) "violates the anti-alienation provisions of ERISA and is therefore preempted." *Id.* at 675 (citing *Baugh*) (other citation omitted).

Pension Plan payment to the warden through the Participants' prison accounts. *Id.*

In accordance with *Guidry, Boggs*, and *Baugh*, the Sixth Circuit properly determined that the SCFRA scheme reflected in the orders and notices effectuates alienation of the Participants' Pension Plan benefits into the hands of the Petitioners prior to distribution and is therefore, preempted by ERISA. *See,* 29 U.S.C. § 1056(d)(1) and *Bronco v. UFCW-N Cal. Emplrs. Joint Pension Plan*, 279 F.3d 1154, 1160 (9th Cir. 2002) (court order preempted because it conflicted with ERISA's anti-alienation provision).

Petitioners rely on the holding in *Wright v. Riveland*, 219 F.3d 905, 910-911 (9th Cir. 2000), to argue there is a circuit split that should concern this Court. Petitioner's argument is without merit because the *Wright* case is easily distinguished from the facts at hand. In *Wright*, neither an ERISA fiduciary or an ERISA plan (like Respondents in this case) was subject to the garnishment action or was otherwise being ordered to take any action prior to or at the time benefits were distributed. Therefore, no enforceable interest against the plan existed. Instead, the garnishment at issue occurred after distribution and the Ninth Circuit found this fact determinative. *Id.* at 921. Unlike *Wright*, Respondents are being ordered (pursuant to the notices and orders) to act prior to distribution, and if they do not act, may be subject to a contempt action brought by the Attorney General, creating an enforceable interest against the Pension Plan.

Petitioners misstate the facts and the law of this case by stating that the Participant's prison address is "the only place he can physically and legally receive [benefits]."

Pet. 17. While Michigan Department of Corrections Directive PD 04.02.105 provides that prisoners are to have an institutional account and no other bank accounts, it does not state that the only place a prisoner may receive pension benefits is at the institution. Going even a step further, Petitioners argue that the Sixth Circuit provides prisoners with "additional rights" by allowing them to maintain a private bank account. Pet. 5. This conclusion is simply unsupported. The Sixth Circuit ruling makes no affirmative statement regarding maintenance of private bank accounts. It only addressed the present SCFRA scheme and found it violated ERISA. DaimlerChrysler sends pension benefit checks as directed by the Participant, not necessarily to a private bank account. In fact the Sixth Circuit stated:

> [W]e are not rendering the state incapable of seeking reimbursement using a prisoner's pension benefits. Once the benefit payments are received, even if the prisoner tries to conceal them in an illegal account, the state can take action against the prisoner by placing a constructive trust on those already-paid funds. The state must, however, wait for the Pension Plan to send the benefit payments at the direction of the prisoner before the state encumbers those payments. To do otherwise would violate both the letter and the spirit of ERISA's anti-alienation provision (which, at a minimum, prohibits the attachment of a debtor's pension plan benefits while still controlled by the pension plan) and the terms of the Pension Plan forbidding the benefits from devolving upon others.

DaimlerChrysler, 447 F.3d at 976; Pet. App. 16a.

The Sixth Circuit properly determined that the SCFRA scheme reflected in the orders and notices effectuates an illegal assignment of the Participants' Pension Plan benefits into the hands of the Petitioners. Accordingly, this Court should deny the Petition.

B. As a "State Law" That "Relates to" a Pension Plan, SCFRA Is Preempted by ERISA.

ERISA expressly provides that its provisions shall "supercede any and all State laws insofar as they may now or hereafter *relate to* any employee benefit plan [subject to ERISA]." 29 U.S.C. § 1144(a) (emphasis added). A "State law" includes "all laws, decisions, rules, regulations, or other State action having the effect of law, of any State." 29 U.S.C. § 1144(c)(1). This Court has made clear that the words "relate to" should be construed expansively and that a "law 'relates to' an employee benefit plan . . . if it has a connection with or reference to such a plan." *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 96-97 (1983). *Egelhoff v. Egelhoff*, 532 U.S. 141, 147 (2001), explained that a state law "relates to" an ERISA plan and therefore ERISA preemption of a state law exists, if the nature and effect of the state law stands as an obstacle to the objectives of ERISA. *Id.* at 147.

1. ERISA Preempts the SCFRA Scheme Because the Scheme Runs Afoul of ERISA's Objective to Provide a Stream of Retirement Income to Pensioners and Their Dependents.

As aptly stated by this Court in *Fort Halifax Packing Co. v. Coyne*, 482 U.S. 1, 8-9 (1987) (citations omitted), "in

any pre-emption analysis, 'the purpose of Congress is the ultimate touchstone.'" The intent of Congress in enacting ERISA's broad preemption provision was to "'round out the protection afforded participants by eliminating the threat of conflicting and inconsistent State and local regulations.'" *Fort Halifax*, 482 U.S. at 9 (citing 120 Cong. Rec. 29197 (1974)). Congress intended that all state laws which "relate to" ERISA plans be preempted so that ERISA fiduciaries can meet their obligations under ERISA without having to contend with state laws which conflict or are contrary to such obligations. *Id.*

The Pension Plan is an "employee benefit plan" subject to ERISA. 29 U.S.C. § 1002(2) and (3). The SCFRA orders and notices are "State laws" that "relate to" the Pension Plan. The effect of the SCFRA scheme is to (i) assign the Participants' Pension Plan benefits to the State in violation of ERISA, and (ii) require DaimlerChrysler, a Pension Plan fiduciary to breach its fiduciary duty to comply with Pension Plan terms. The SCFRA scheme stands as an obstacle to ERISA's objective to provide a stream of income for the Participants and their beneficiaries. The SCFRA scheme also stands as an obstacle to ERISA's objective to provide ERISA fiduciaries with a uniform administrative scheme by superceding all "State laws" which conflict with ERISA. 29 U.S.C. § 1144(a); *Egelhoff*, 532 U.S. at 147; *Guidry*, 493 U.S. at 376.

Petitioner's emphasis on Michigan's interest in obtaining reimbursement for the cost of housing inmates ignores the fact that Congress enacted ERISA to protect not only participants, but also their beneficiaries. It is a fundamental tenet of ERISA that earned pensions be available at retirement for pensioners and dependents. 29 U.S.C. § 1056(d); *Guidry*, 493 U.S. at 376. ERISA accomplishes

that policy by requiring that ERISA pension plans include anti-alienation provisions.[5] 29 U.S.C. § 1056(d). The Pension Plan at the center of this case does so. *Guidry* reiterated the clear intent of Congress that such pensions may not be assigned or alienated:

> Section 206(d) reflects a considered congressional policy choice, a decision to safeguard a stream of income for pensioners (and their dependents who may be, and perhaps usually are, blameless), even if that decision prevents others from securing relief from the wrongs done them. If exceptions to policy are to be made, it is for Congress to undertake that task.

Guidry, 493 U.S. at 376.

The importance of protection of dependents is also reflected in the Retirement Equity Act of 1984 ("REA"), Pub. L. No. 98-397, 98 Stat. 1426. REA amended ERISA and the Internal Revenue Code to require that tax qualified defined benefit pension plans (as is the Pension Plan) provide benefits to a participant's spouse in the form of a joint and 50% survivor annuity (i.e., "qualified joint and survivor annuity"), unless waived by the spouse. 29 U.S.C. § 1055(d); 26 U.S.C. § 417.

In this case, the SCFRA scheme reflected in the orders and notices may deprive a Participant's spouse of "joint" Pension Plan benefits to which they may be entitled under ERISA's qualified joint and survivor annuity provisions, ignoring the economic partnership of marriage and the

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[5] The Internal Revenue Code also governs the Pension Plan and such qualified pension plans contain anti-alienation provisions. 26 U.S.C. § 401(a)(13)

contribution of the spouse. The orders assign up to 90% of the Participants' undistributed pension benefits to the State and may unduly punish a spouse for the actions of the Participant.

In sum, the SCFRA scheme reflected in the orders and notices runs contrary to congressional intent to protect a stream of income for the Participants and their dependents through ERISA's anti-alienation provisions (as well as its joint annuity provisions), and is thus preempted.

2. ERISA Preempts the SCFRA Scheme Because the Scheme Places an Impermissible Administrative Burden on DaimlerChrysler, a Pension Plan Fiduciary, Since It Requires DaimlerChrysler to Violate Pension Plan Terms.

Pension Plan terms prohibit the assignment and alienation of a Pension Plan benefit. Additionally, Pension Plan terms require the Participant to provide DaimlerChrysler with address information. Relevant Pension Plan terms are quoted at Pet. 23-24 and *DaimlerChrysler*, 447 F.3d at 971; Pet. App. 6a-7a. If DaimlerChrysler changes a Participant's address to his prison address, it breaches its fiduciary duty to follow Pension Plan terms prohibiting the assignment and alienation of a Pension Plan benefit. The notices, therefore, place an impermissible administrative burden on DaimlerChrysler, since they bind DaimlerChrysler to a particular set of state rules (contrary to Pension Plan terms and ERISA) to determine where a Pension Plan payment is sent. *Egelhoff*, 532 U.S. at 147-148.

ERISA requires a fiduciary, such as DaimlerChrysler, to follow Pension Plan terms and act in the sole interest of the Participants. 29 U.S.C. §§ 1104(a)(1) and 1104(a)(1)(D); *Egelhoff*, 532 U.S. at 147. More than one court has noted that a "fiduciary's duties under ERISA are 'the highest known to the law'" *Reich v. Valley Nat'l Bank*, 837 F. Supp. 1259, 1273 (S.D.N.Y. 1993). DaimlerChrysler, an ERISA Pension Plan fiduciary, *is bound by the terms of the Pension Plan.* DaimlerChrysler cannot change a Participant's address to his prison address (or to any other address) unless directed to do so by the Participant.

In *Egelhoff*, this Court held that ERISA preempted a Washington statute which, upon divorce, automatically divested an ex-spouse of any ERISA plan benefits to which she may be entitled pursuant to a participant's beneficiary designation. *Egelhoff*, 532 U.S. at 143. The dispute in *Egelhoff* arose when a divorced plan participant died without having changed his beneficiary designation, which named his ex-spouse. The participant's heirs and the participant's ex-spouse both claimed the pension plan benefits. The Washington statute would have entitled the participant's heirs to his pension benefits, because it operated to automatically revoke the participant's beneficiary designation upon divorce. The pension plan, however, provided that benefits were to be distributed to the participant's designated beneficiary, which entitled the ex-spouse to the participant's pension benefits. *Id.* at 146-147.

This Court concluded that the Washington statute was preempted because it attempted to force ERISA plan fiduciaries to follow a particular choice of rules in determining a participant's beneficiary. *Id.* at 147. Specifically, this Court stated:

> The administrators must pay benefits to the beneficiaries chosen by state law, rather than those identified in the plan documents. The statute thus implicates an area of *core ERISA concern*. In particular, it runs counter to ERISA's commands that a plan shall "specify the basis on which payments are made to and from the plan," § 1102(b)(4), *and that the fiduciary shall administer the plan "in accordance with the documents and instruments governing the plan,"* § 1104(a)(1)(D), making payments to a beneficiary "who is designated by a participant, or by the terms of [the] plan." § 1002(8).

Egelhoff, 532 U.S. at 147-148 (citations omitted) (emphasis added).

In this case, relevant Pension Plan terms in Section 14 provide; "[a]ny attempt to alienate, sell, transfer, assign, pledge or otherwise encumber [benefits payable under the Pension Plan], whether presently or thereafter payable, shall be void." *DaimlerChrysler*, 447 F.3d at 971; Pet. App. 7a. The Pension Plan states that benefits cannot "devolve upon anyone else." *Id.* The Summary Plan Description provided to each Participant provides that if a Participant's address changes he "should notify Benefit Express at 1-800-409-3300 . . . " *Id.* The Participant must have a password to pass through the Benefit Express phone system and accomplish the address change. *Id.*

As in *Egelhoff*, this Court should conclude that ERISA preempts the SCFRA scheme because it attempts to bind DaimlerChrysler to a particular choice of state rules (which are contrary to Pension Plan terms) in determining a Participant's address. *Egelhoff*, 532 U.S. at 147-148. As Petitioner states, "it is the prison security restrictions that dictate where to send the funds." Pet. 7. But, Pension Plan

terms *require the Participant* (and no one else) to provide an address to the Pension Plan. Finally, Pension Plan anti-alienation terms expressly provide that no benefit payable shall "devolve upon anyone else." *Id.*

Petitioners cite Michigan Department of Correction Directives in support of their position that the orders and notices do no more than provide DaimlerChrysler with a Participant's "legal" address. Because ERISA preempts all "State laws" which "relate to" the Pension Plan, 29 U.S.C. § 1144, it is irrelevant what the orders and notices and the Michigan Directive provide regarding a Participant's "legal" address.[6] Pension Plan terms govern Daimler-Chrysler's actions with respect to a Participant's address. 29 U.S.C. § 1104(a)(1) and 1104(a)(1)(D); *Egelhoff*, 532 U.S. at 147-148.

Petitioners' position also ignores DaimlerChrysler's fiduciary duty under ERISA to follow Pension Plan terms that expressly prohibit "any attempt" to effectuate an assignment of "any kind." DaimlerChrysler cannot change a Participant's address because to do so would effectuate an assignment in violation of Pension Plan anti-alienation terms and ERISA. Thus, the SCFRA scheme relates to the Plan by forcing it to take some action contrary to ERISA and Pension Plan terms. SCFRA is, therefore, preempted by ERISA.

[6] A close look at the cited Directives shows that while they prohibit an inmate from holding a bank account outside of the institution, they do not prohibit benefits sent to a home address from being kept by the inmate's spouse or dependents. Therefore, Petitioners' assertion that the Sixth Circuit's ruling allows an inmate to maintain an illegal bank account, does not logically follow.

CONCLUSION

This Court should deny the Petition because the Sixth Circuit properly held that ERISA preempts SCFRA orders and notices, and any similar orders or directives, because they violate ERISA and Pension Plan terms which prohibit the assignment and alienation of a Pension Plan benefit. Because the SCFRA scheme reflected in the orders and notices is a "State law" that "relates to" the Pension Plan and the nature and effect of the notices and orders stands as an obstacle to, or runs contrary to, ERISA's anti-alienation provisions (to protect a stream of income for the Participants and their dependents), it is preempted by ERISA. *Egelhoff*, 532 U.S. at 147. Alternatively, the SCFRA scheme is preempted by ERISA since it requires DaimlerChrysler, a Pension Plan fiduciary, to violate Pension Plan terms and could subject DaimlerChrysler to a breach of fiduciary duty claim by its Participants.

Respectfully submitted,

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